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Unilateral acts of States

Replies from Governments to the questionnaire

Report of the Secretary-General

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I. Introduction

1. At its fifty-first session, in 1999, the International Law Commission decided that the Secretariat, in consultation with the Special Rapporteur on the topic "Unilateral acts of States", should elaborate and send to Governments a questionnaire requesting materials and inquiring about their practice in the area of unilateral acts, as well as their position on certain aspects of the Commission's study on the topic. Pursuant to that request, the Secretary-General, on 30 September 1999, circulated to Governments the text of a questionnaire on unilateral acts of States.

2. As at 6 July 2000 replies to the questionnaire had been received from the Governments of the following Sates: Argentina, Austria, El Salvador, Finland, Georgia, Germany, Israel, Italy, Luxembourg, Netherlands, Sweden and United Kingdom of Great Britain and Northern Ireland.

3. Section II below contains the text of the replies received, which have been broken down and grouped into general comments and replies to each of the questions comprising the questionnaire, with appropriate cross-references.

II. Replies from Governments to the questionnaire

General comments

Austria

[Original: English]
[2 March 2000]

The term "unilateral acts of States" encompasses a wide variety of acts. Given the very different legal and political natures of the various categories of unilateral acts, it does not seem possible to supply uniform answers to the questions contained in the Commission's questionnaire. In fact, any attempt to do so would, in the view of Austria, run a serious risk of creating a distorted impression of the legal situation. On the other hand, owing to the multitude of categories of unilateral acts and the different legal issues which they raise respectively, it seems neither feasible nor particularly helpful to address each question contained in the questionnaire in relation to each category of unilateral act. Therefore, Austria will limit its comments to some general observations. (See Austria's observations on question 1 below.)

Austria hopes that the comments and the examples given demonstrate the difficulty of giving answers to the questions contained in the Commission's questionnaire which are both generally valid *and* helpful for legal practice. In our view this is at least partly attributable to the very different nature of the various acts and categories of acts described as unilateral acts.

Finland

[Original: English]
[3 March 2000]

As most of the questions in the questionnaire, which covers a wide range of unilateral acts, are inappropriately general or even obscure, the Finnish Government finds it somewhat difficult to respond. Given that the Government of Finland has doubts as to the usefulness of the study in its present rather general form, and as to whether the topic as such is suitable for a detailed codification, the Government of Finland wishes the Commission to consider if there are certain types of unilateral acts which are found particularly problematic and need a comprehensive study by the Commission, before further steps are taken.

Despite the general nature of the questions in the questionnaire, the Government of Finland wishes to provide the following remarks. (See Finland's remarks on questions 1, 2, 5, 7 and 9 below.)

The answers regarding questions 3, 4, 6 and 8 depend on the context. As to question 3, there are no predetermined formalities. Everything depends on the context as the purpose is to protect legitimate expectations and not to create another category of agreements.

As far as Finnish practice is concerned, reference may be made to a number of statements by the Finnish President (e.g., concerning Norway's claim in respect of continental shelf in 1977 or the interpretation of the Paris Peace Treaty in 1990) that have been held to create legal consequences. The practice is recognized and followed in Finland.

Germany

[Original: English]
[7 March 2000]

The German Government, is like others, in some difficulty in responding to the questions put forward to Governments in the questionnaire. This is because of the wide range of unilateral acts in respect of which the questions are posed (promise, protest, recognition, waiver, etc.), as well as because of the fact that the questions do not admit of the same answer in respect of each of the acts concerned. The question, for example, whether an act is capable of revocation (question 9) will depend upon the particular category of act under consideration, e.g., a "promise", a "protest" or "an act of recognition". Besides, there is also the main difficulty that a genuine assessment of the legal effects of unilateral acts (question 5) cannot be made in the abstract without regard to the concrete circumstances of the act in question and the effect of relevant rules of law. In order to evaluate the legal effects of a specific unilateral act, it will be necessary to be fully cognizant of the factual and legal context in which, for example, a "promise", "protest" or "failure to protest" occurs.

Germany considers that an approach, as reflected in the questionnaire and suggested in the reports of the Special Rapporteur, which seeks to subject unilateral acts to a single body of rules across the board is not well founded. Consequently, the question of an appropriate approach to the issue of unilateral acts of States for further efforts to contribute to the progressive development of international law also in this field should be discussed again at the next session of the International Law Commission.

Italy

[Original: French]
[16 May 2000]

To begin with, we had some difficulty in answering the questions, in view of their excessively general and often obscure nature.

The Italian Government has some doubts as to the usefulness of a study conducted on such a general basis, as there is not one general category of unilateral acts, but several types, some of which are fairly problematic and require detailed consideration.

Nevertheless, we endeavoured to supply answers, albeit general ones, while noting at the outset that the answers must be different depending on the category of unilateral acts in question.

In particular, we classified unilateral acts into the following three categories:

(a) **Unilateral acts referring to the possibility of invoking a legal situation**. Recognition, protest and waiver belong to this category. These three types of acts require an explicit expression of consent so as to ensure certainty and security in international relations;

(b) **Unilateral acts that create legal obligations**. This category includes promise, an act by which a State obligates itself to adhere or not adhere to a certain course of conduct. A promise has value only if the State which made it really had the intention of obligating itself by this means. It is difficult, however, to ensure that there is a real willingness to undertake obligations;

(c) **Unilateral acts required for the exercise of a sovereign right**. Such acts are a function of the exercise of powers by States as authorized under international law (delimitation of territorial waters or of an exclusive economic zone, attribution of nationality, registration of a vessel, declaration of war or neutrality).

Luxembourg

[Original: French]
[12 April 2000]

Since the questions concern a very wide variety of unilateral acts and the same reply cannot be given for each of the acts concerned, it is rather difficult for the Government of Luxembourg to reply to the questions. An evaluation cannot be made in the abstract without considering the circumstances and the effects of the relevant decisions.

Moreover, Luxembourg feels that an approach, as reflected in the questionnaire and proposed in the Special Rapporteur's reports, which seeks to subject unilateral acts to a single set of rules, like the Vienna Convention on the Law of Treaties, is not justified.

In the present circumstances, therefore, Luxembourg intends to refrain for the time being from replying to the questionnaire.

Netherlands

[Original: English]
[24 March 2000]

Introduction

The response of the Government of the Netherlands, with the exception of the examples of State practice given below, and the response to question 6, is based on the advice of the independent Advisory Committee on International Law Issues.

1. State practice

An example of a unilateral act by the Netherlands is the international notification of the Act of 1985 concerning the demarcation of its territorial waters. It should be noted that this unilateral act does not meet the criteria set by the Special Rapporteur and would hence be excluded from the purview of a "unilateral act", as it is related to pre-existing law. An example that does meet at least one of the criteria set in the questionnaire ("that a unilateral statement could be made by one or more States jointly or in a concerted manner") is the recognition of Slovenia and Croatia in 1991, given that this recognition was based on criteria developed jointly within the European Union. Another example that could be cited in this context is the recognition, in January 1992, of all republics of the Commonwealth of Independent States that had responded positively to the guidelines on the recognition of new States in Eastern Europe and the Soviet Union drawn up in the framework of the European Community. It should be noted that specific recognition of the Russian Federation was not considered necessary, as that State may be considered the continuation of the former Soviet Union.

Another example of a unilateral act is the 1994 written declaration in which the Minister of Defence of the Netherlands notified the States participating in a North Atlantic Treaty Organization (NATO) training exercise, which was to be held in the Netherlands under the NATO Partnership for Peace programme, of the various legal requirements for entry and temporary stay of their personnel, members of military forces, in the Netherlands. The declaration was addressed in particular to the participating non-NATO States, that is, States which were not parties to the NATO status-of-forces agreement, and contained a promise to provide to members of their military forces similar facilities, exemptions and waiver of jurisdiction for crimes and offences as contained in the agreement.

2. General observations (general approach and scope of the topic)

Before responding to the specific questions addressed in the questionnaire, the Netherlands wishes to comment, as invited in the questionnaire's closing comments, on the general approach and scope of the topic.

The questionnaire covers a wide range of types of unilateral acts. It is difficult to provide very specific answers to the questions posed without differentiating between the various types of unilateral acts such as promise, notification, recognition, waiver and protest.

Furthermore, the criteria that the Special Rapporteur has adopted for "unilateral acts" define the subject very narrowly. The Government of the Netherlands realizes that the Special Rapporteur was concerned to exclude the many acts and statements that derive their binding character from pre-existing norms, but nonetheless believes that the Special Rapporteur's chosen definition may lead to an unnecessarily reductive approach to the topic. For instance, unilateral acts involving the State's international responsibility and those leading to estoppel are excluded from the definition. The sustainability of this approach is open to question. The Netherlands therefore welcomes the approach of the Working Group appointed by the ILC and the fact that the Working Group's recommendations have been adopted by the Commission. In the Netherlands' view, this approach leads to a certain widening of the definition of "unilateral acts".

In his first report, the Special Rapporteur stated that the unilateral acts of international organizations should be excluded from the topic. The Commission endorses this restriction. At the same time, there is a consensus that the unilateral acts of international organizations are gaining in significance. The Netherlands would urge the ILC to address this issue too, after the unilateral acts of States have been dealt with, as was done in the Conventions on the Law of Treaties (Vienna I (1969) and Vienna II (1986)). The Netherlands would like to see the topic of "unilateral legal acts of international organizations" placed on the agenda of the ILC. The Netherlands acknowledges that the unilateral acts of international organizations present

other aspects and problems, but cannot see any reason to delay taking stock of them. The importance of the topic is universally acknowledged. The ILC itself has sometimes come near to addressing the topic.[1] The ILC sometimes appears to be reluctant to codify sections of the law of international organizations. The Netherlands, which hosts numerous international organizations, attaches importance to this topic being dealt with by the ILC.

Regarding the definition agreed by the Commission and reproduced in the questionnaire, the Netherlands would note that while a State may intend to produce legal effects by means of a unilateral declaration, this intention may not suffice actually to produce such effects under international law. It is ultimately international law itself (or a general principle of such) that can provide the binding force intended. The ILC should give this matter further consideration.

Sweden

[Original: English]
[28 April 2000]

Unilateral acts occur in a number of circumstances, but the legal consequences thereof are not always clear. Nevertheless, the unilateral act is sometimes a useful alternative to other legal instruments.

Like others, the Swedish Government is not yet convinced that it is possible to formulate rules which apply to all unilateral acts. Certain issues are surely relevant for all unilateral acts, such as the question of the capacity to bind a State. Other issues must be treated differently for different acts; for instance, the issue of revocation might not be treated in the same fashion with regard to promises as with regard to acts of recognition.

Whether particular rules should be conceived as exceptions to general rules or as special regimes is both a conceptual and a practical problem. For instance, should an analysis of unilateral acts include only the general rule, if there are any, or also the particular rules dealing with different forms of unilateral acts?

These difficulties may not necessarily render the project impossible, but they do call for some caution. Therefore, as was suggested in the statement of the Nordic countries in the Sixth Committee on 3 November 1999, it may be advisable to proceed in a step-by-step manner, starting with acts creating obligations. It might appear at a later stage that the Commission should limit its work to certain types of unilateral acts.

What follows is an effort to respond to the questionnaire. In line with the foregoing it must be stated that it has not always been possible to supply answers which are valid for all types of unilateral acts. The responses are of course only of a preliminary nature, and the Swedish Government looks forward to following the further developments of the discussion, be it within the Commission, in the Sixth Committee of the General Assembly or in other forums.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[3 March 2000]

In view of the wide range of unilateral acts in respect of which the questions are posed and the fact that the questions do not admit of the same answer in respect of each of the acts concerned, the Government of the United Kingdom is in some difficulty in responding to the questionnaire. The question, for example, whether an act is capable of revocation (question 9) will depend upon the particular category of act under consideration, for example, a "promise", a "protest" or "an act of recognition". There is also the difficulty that, in terms of the core issue of the legal effects of unilateral acts (question 5), much will depend on the context in which, for example, a "promise", "protest" or "failure to protest" occurs. An assessment cannot be made in the abstract without regard to the surrounding circumstances and the effect of relevant rules of law.

The Government of the United Kingdom considers that an approach, as reflected in the International Law Commission questionnaire and suggested in the reports of the Special Rapporteur, which seeks to subject unilateral acts to a single body of rules across the board, is not well founded and may

[1] See *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2), para. 589: "It was also noted in the Working Group that a unilateral statement could be made by one or more States jointly or in a concerted manner."

even prove unhelpful. Moreover, the approach being taken seems to give inappropriate prominence to the Vienna Convention on the Law of Treaties of 1969. The Government of the United Kingdom is not convinced that the provisions of the Vienna Convention can be applied *mutatis mutandis* to all categories of unilateral acts of States.

The Government of the United Kingdom suggests that the International Law Commission might wish to consider, if necessary with the help of a questionnaire, whether there are specific problems in relation to specific types of unilateral act which might usefully be addressed in an expository study.

Question 1
To what extent does the Government believe that the rules of the 1969 Vienna Convention on the Law of Treaties could be applied *mutatis mutandis* to unilateral acts?

Argentina

[Original: Spanish]
[18 May 2000]

The Government of Argentina believes that there are many points of contact between the law of treaties and unilateral acts. Both belong in the category of juridical acts and, as such, they theoretically share the regimes of errors of intent, nullity, existence, etc. Many of the rules of the Vienna Convention can therefore be adapted to the sphere of unilateral acts. However, the International Law Commission should avoid the temptation to transpose these rules automatically. It must not be forgotten that these are acts which do not require a concurrent statement of intent on the part of other subjects of law, as opposed to treaties, where others state their consent to be bound by the provisions of the treaty.

Austria

[Original: English]
[2 March 2000]

Austria is not convinced that the provisions of the 1969 Vienna Convention on the Law of Treaties can automatically be applied *mutatis mutandis* to all categories of unilateral acts of States. It is well known that the term "unilateral act" may be understood as describing both autonomous acts independent from treaty relations as well as so-called "adjunctive unilateral acts" which fall within the scope of treaty law. Since the ILC is perfectly aware of the treatment of the latter category under international law, no further elaboration on this topic is needed. Suffice it to say that under Austrian national law the legal treatment of such "adjunctive unilateral legal acts" largely follows the rules governing international treaties. The categories of autonomous unilateral acts, on the other hand, are too heterogeneous to allow clear answers under national or international law. Thus it could be argued that the rule contained in article 7, paragraph 2 (a), of the 1969 Vienna Convention on the Law of Treaties, which provides for a legal presumption for Heads of State, Heads of Government and Ministers for Foreign Affairs as representing their Sate is equally applicable to unilateral acts on the basis of customary international law. However, as the 1974 *Nuclear Tests Cases (Australia/New Zealand v. France)* have shown, in relation to unilateral acts the International Court of Justice (ICJ) views the presumption of persons empowered to represent their State in virtue of their functions as going beyond the scope of article 7, paragraph 2 (a), of the above-mentioned Convention.

The legal situation regarding the rules of interpretation applicable to unilateral acts seems equally unclear. In the 1998 *Fisheries Jurisdiction Case (Spain v. Canada)*, the ICJ considered the regime relating to the interpretation of unilateral declarations made under Article 36 of the Statute of the Court not to be identical with that established for the interpretation of treaties by the Vienna Convention on the Law of Treaties. The Court observed that the provisions of that Convention may only apply analogously to the extent compatible with the sui generis character of the unilateral acceptance of the Court's jurisdiction. The Court explained further that it would interpret the relevant words of such a declaration, including a reservation contained therein, in a natural and reasonable way, having due regard for the *intention* of the State concerned at the time when it accepted the compulsory jurisdiction of the Court. Moreover, the intention of the State concerned could be deduced not only from the text of the relevant clause, but also from the context in which the clause is to be read, and an examination of evidence regarding the circumstances of its preparation and the purposes intended to be served. With respect to the interpretation of these unilateral acts, therefore, it appears that the Court

attaches much higher interpretative significance to the subjective element than would be permissible under the rules of "objective" treaty interpretation pursuant to articles 31 and 32 of the Vienna Convention on the Law of Treaties. How far this subjective element can be taken and whether or to what extent the same reasoning is applicable to other categories of unilateral acts remains unclear.

El Salvador

[Original: Spanish]
[13 April 2000]

Under our legal system, the Vienna Convention on the Law of Treaties does not constitute a law in force; it constitutes *jus cogens* and is a supplementary source of international law.

As a supplementary source, the rules of the Convention can be adapted to serve as principles and provisions for the regulation of unilateral acts, but with substantial changes, since, unlike treaties in which there are two or more wills in agreement, acts are per se unilateral. The Vienna Convention defines treaties as international agreements concluded between States in written form and governed by international law, whereas the unilateral acts of a State on the international plane are acts emanating from a single State which have legal effects with regard to another State or the international community, in what is a clear expression of the State's sovereignty.

The Salvadoran State can, for instance, declare war on another State (art. 131 (25) of the Constitution of the Republic) when the Legislative Assembly so decides. To inform the other State and the international community of such declaration of war, it makes a declaration to the State concerned and gives notification to the international community, both of these being unilateral acts. Such declaration and notification are made through an official vested with full powers, as established in the relevant article of the Convention. The act must also be in written form, making its nature similar to that of a treaty (article 1 (a) of the Convention).

The Vienna Convention also provides expressly for such unilateral acts as reservations (section 2, articles 19 et seq.), in which the provisions of the Convention are applied directly.

Finland

[Original: English]
[3 March 2000]

The formulation of the question is inappropriately general. Whether or not two or more reciprocal or parallel unilateral acts can be said to form an agreement must be interpreted from the context. The interpretative context is not identical with that of the Vienna Convention on the Law of Treaties as the binding force of unilateral acts is not simply a contractual matter but one of protecting legitimate expectations.

The principle of interpretation of unilateral acts are to a large extent similar to those in articles 31 to 33 of the Vienna Convention. It is doubtful whether it is reasonable to draft a separate instrument to cover them. The capacity to bind a State by a unilateral declaration follows from article 7 of the Vienna Convention. However, many of the formal provisions of the Vienna Convention on reservations, entry into force, amendment or invalidity are not applicable as such.

Georgia

[Original: English]
[3 March 2000]

The rules on the 1969 Vienna Convention on the Law of Treaties cannot be adapted *mutatis mutandis* to unilateral acts because of the different character of the former. The unilateral act is the expression of the will of a single State (or of a collective nature by two or several States), whereas the rules in the Vienna Convention have been drafted taking into consideration the specifics of meeting wills of contracting parties. But that does not mean that rules designed to govern unilateral acts may neglect the rules of the Vienna Convention. On the contrary, the rules must adhere generally to the nature and idea of the above-mentioned multilateral treaty.

Israel

[Original: English]
[21 June 2000]

As the Government of Israel noted in its statement before the Sixth Committee at the fifty-fourth session of the General Assembly, the law of treaties could be a source of inspiration for the development of principles regarding unilateral acts

despite the fact that treaty law is designed to regulate legal undertakings which involve two or more States parties. This is surely the case with respect to those formal unilateral acts executed under the law of treaties, such as signatures, ratification, reservations and denunciation. However, several provisions of the Vienna Convention may also be applicable, to some extent, with respect to unilateral acts of a more general nature.

Clearly, those provisions of the Vienna Convention which relate, by their very nature, to reciprocal commitments between States would not be relevant in the context of general unilateral undertakings. However, certain other aspects of the Vienna Convention could be adapted, *mutatis mutandis*, to unilateral acts. In particular, consideration should be given to the following: the duty to perform legal obligations in good faith; principles of interpretation; principles related to third States; and possibly some of the provisions related to invalidity and termination (for example, coercion, supervening impossibility of performance and the *rebus sic stantibus* principle).

Italy

[Original: French]
[16 May 2000]

With regard to the question concerning the rules of interpretation applying to unilateral acts, there is a tendency to apply to them the principles of interpretation referred to in articles 31 to 33 of the Vienna Convention on the Law of Treaties. On the other hand, the other provisions of that Convention do not apply, in view of the nature of unilateral acts, which is inherently different from that of treaties.

Luxembourg

[Original: French]
[12 April 2000]

Luxembourg feels that an approach, as reflected in the questionnaire and proposed in the Special Rapporteur's reports, which seeks to subject unilateral acts to a single set of rules, like the Convention on the Law of Treaties, is not justified.

Netherlands

[Original: English]
[24 March 2000]

Testing for compatibility with the Vienna Convention on the Law of Treaties is a logical step as a frame of reference when codifying rules on unilateral acts of States. The main ingredients of the Vienna Convention (the conclusion of conventions, their interpretation, application and termination) may be deemed partly applicable, *mutatis mutandis* to unilateral acts. However, all aspects of this compatibility must be examined in full before an adequate response to the question can be given. Only at the end of such an exercise can it be determined whether analogous application of the rules of the Vienna Convention to unilateral acts is not only possible but also necessary.

Sweden

[Original: English]
[28 April 2000]

To a large degree, the same considerations are valid for unilateral acts and for treaties. Consequently, the law of treaties will be a useful guide, *mutatis mutandis*, regarding the issues of capacity to commit the State, observance of obligations arising out of a unilateral act, the relevance of internal law, the application of obligations, the interpretation of unilateral acts, the effect on third States, invalidity, impossibility of performance, fundamental change of circumstances (with some reservations), *jus cogens*, as well as consequences of invalidity, termination or suspension. On the other hand, those parts of the Vienna Convention on the Law of Treaties which relate to the conclusion and the entry into force of treaties (save articles 6 and 7) seem to be less relevant, and great caution should be used with regard to provisions of the Vienna Convention on the Law of Treaties on withdrawal, termination and suspension, even though there are some similarities in this regard.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[3 March 2000]

The approach being taken seems to give inappropriate prominence to the Vienna Convention on

the Law of Treaties, 1969. The Government of the United Kingdom is not convinced that the provisions of the Vienna Convention can be applied *mutatis mutandis* to all categories of unilateral acts of States.

Question 2
Who has the capacity to act on behalf of the State to commit the State internationally by means of a unilateral act?

Argentina

[Original: Spanish]
[18 May 2000]

Who has the capacity to act unilaterally on behalf of the State depends on the circumstances of the case, the internal institutional organization of the State and the nature of the unilateral act. According to a well-established norm of general international law, acts of the Head of State, Head of Government or Minister for Foreign Affairs are attributable to the State. However, there is a possibility that other ministers or officials, in certain specific circumstances, may also act unilaterally on behalf of the State. As a result, the powers of the official or officials carrying out the unilateral act are especially important. Moreover, the unilateral act may take the form of a series of concordant or convergent expressions or statements of intent on the part of not one but several organs of the State, as in the *Nuclear Tests* cases.

It must not be forgotten, however, that in today's world, in which government officials increasingly communicate, maintain institutional relations and act at the external level, it is necessary to safeguard the certainty and clarity needed to determine the existence of an international act of a State. The norm concerning the three State authorities (Head of State, Head of Government and Minister for Foreign Affairs) has the advantage of guaranteeing the necessary legal security and stability in international relations. As a result, any addition of other persons or organs to this established norm of customary law must be approached restrictively, bearing in mind contemporary international realities.

Austria

[Original: English]
[2 March 2000]

See reply to question 1.

El Salvador

[Original: Spanish]
[13 April 2000]

The person with this capacity is the person vested with full powers to that end by the Government of the Republic of El Salvador. This accords with article 7 of the Convention and article 168 of the Constitution of the Republic.

Generally speaking, the following persons have full powers: the President of the Republic; the Minister for Foreign Affairs; the head of a diplomatic mission for the performance of unilateral acts ordered by the Salvadoran State and directed at the State to which the head of mission is accredited; representatives accredited by the Salvadoran State to an international organization for the performance of a unilateral act; and officials granted full powers on a special basis for the performance of a unilateral act.

Finland

[Original: English]
[3 March 2000]

Article 7, paragraph 2 of the Vienna Convention is probably fully applicable.

Georgia

[Original: English]
[3 March 2000]

According to article 48, chapter 3, "the Parliament of Georgia is the supreme representative body of the country, which exercises legislative power, determines the main directions of domestic and foreign policy". A law adopted or a decision taken by Parliament may constitute a unilateral act.

According to paragraph 2 of article 69, chapter 4, "the President of Georgia directs and exercises the domestic and foreign policy of the State".

According to paragraph 12 of the Law of Georgia on International Treaties, the Minister for Foreign

Affairs of Georgia may act without full powers on certain occasions.

Israel

[Original: English]
[21 June 2000]

In general, the Government of Israel supports the principles elaborated in draft article 4 of the second report on unilateral acts of States regarding the representatives of a State for the purpose of formulating unilateral acts. However, it should be emphasized that persons may only be considered to be representing the State if as draft article 4 provides, "it appears from the practice of the States concerned" that there was an intention to view them as such. In this context, it will be necessary to determine in any given case whether the person in question has the authority, at the domestic level, to engage the State by a unilateral legal act. In this regard, it is suggested that a very rigid approach be adopted with respect to the determination of whether such officials are authorized to bind the State through unilateral legal acts. It should be noted that according to Israeli practice, ministers or high-ranking officials require specific and express authorization in order to engage the State by way of unilateral legal acts.

Italy

[Original: French]
[16 May 2000]

As to the national authority competent to formulate unilateral acts, this depends on the type of unilateral act. For [unilateral acts referring to the possibility of invoking a legal situation and unilateral acts that create legal obligations] (see reply under question 4), competence, under the Italian system, resides in the executive branch, which is also responsible for maintaining relations with other States.

For [unilateral acts required for the exercise of a sovereign right] (see reply under question 4), it is not possible to give a precise answer, for competence may vary depending on the nature of the act. If what is involved is a legislative act, the Chambers (Chamber of Deputies, Senate) are responsible; other acts may fall within the purview of the central Government or another administration concerned, a region, and so on.

Netherlands

[Original: English]
[24 March 2000]

Taking as a basis the application by analogy of the rules of the Vienna Convention, it must be assumed that the same categories of persons that are listed in article 7 of the Vienna Convention have the capacity to commit the State internationally by means of a unilateral act, namely, Heads of State, Heads of Government, Ministers for Foreign Affairs and, to a limited extent, heads of diplomatic missions. Others would require full powers. The approach adopted in the Vienna Convention is highly formalistic in this regard. It could be argued that in the realm of unilateral acts, all persons who may be deemed mandated by virtue of their tasks and powers to make pronouncements that may be relied upon by third States can be regarded as having the capacity to commit the State. A case in point is France's nuclear tests, when it was not only the French President's statement to which weight was attached, but also that made by the French Minister of Defence. Other examples include statements by Ministers' spokespersons. Reference may also be made to the *Gulf of Maine* case, which concerned the question of whether letters from junior Canadian civil servants and the prolonged failure of the United States of America to reply to them sufficed to conclude that the United States had given its tacit consent to the Canadian proposals for delimitation of maritime boundaries. Another example might be an undertaking given by the commander of a warship that if persons possessing the same nationality as the warship are evacuated from a war zone, other nationals will be evacuated along with them. Depending on the nature of the unilateral statement, one might consider drafting a restrictive definition of the conditions subject to which a unilateral statement would produce legal effects. After all, most kinds of unilateral statements entail incurring obligations. Protests are an exception to this rule. Thus the capacity to commit the State is variable, and depends on the category of unilateral act involved.

Sweden

[Original: English]
[28 April 2000]

As indicated above, article 7 of the Vienna Convention on the Law of Treaties is highly relevant for this question (as are articles 46 and 47). Article 7.7

of the rapporteur's draft articles provides that a unilateral act is invalid if the act was "in clear violation of a norm of fundamental importance to its domestic law". Since the intention is not to express a different position than that of article 46 of the Vienna Convention on the Law of Treaties,[2] the word "clear" should be changed to "manifest".

Question 3
To what formalities are unilateral acts subjected? —
(a) Written statements;
(b) Oral statements;
(c) Context in which acts may be issued;
(d) Individual, joint or concerted acts.

Argentina

[Original: Spanish]
[18 May 2000]

With regard to the formalities which such acts must observe, neither State practice nor jurisprudence or legal doctrine require any specific formality, provided that the content of the act is clear and precise and the intent of the State is obvious. In other words, the necessary requirement is that States and other subjects of international law, at which the unilateral act may be directed, should be aware of the expression of intent.

El Salvador

[Original: Spanish]
[13 April 2000]

The formalities that each unilateral act must observe are that it must be performed by a given State through officials with full powers, and it must be an express, formal communication or statement.

In exceptional cases, the act may be performed tacitly, as happens with recognitions and waivers.

Finland

[Original: English]
[3 March 2000]

There are no predetermined formalities. Everything depends on the context as the purpose is to protect legitimate expectations and not to create another category of agreements.

Georgia

[Original: English]
[3 March 2000]

- The ordinary form of a unilateral act must be a written statement.
- An oral statement may be considered as an act, but preferably a statement must be reflected in a procès-verbal, signed by the author. The legal effect more efficiently proceeds from a document, to be referred.
- As for the context in which acts may be issued, it may range from legal to political or economic, but having legal consequences.
- A unilateral act may be individual or joint.

Israel

[Original: English]
[21 June 2000]

As indicated in its statement before the Sixth Committee referred to above, the Government of Israel does not consider that unilateral acts should be subject to formalities. As the International Court of Justice held in the *Nuclear Tests* case, international law does not impose strict requirements with respect to the form which a unilateral act should take. Indeed, the Court stated that "[w]hether a statement is made orally or in writing makes no essential difference ... the question of form is not decisive".[3]

What is relevant in determining the possible legal effects of a unilateral act is not the form which the act takes, but the intention of the State to produce legally binding commitments. The problem lies not with determining the formalities to which a unilateral act must be subjected but in the need to interpret the State's intention, given the circumstances in which the

[2] See *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2), para. 141.

[3] *I. C. J. Reports 1974*, p. 253, para. 43.

unilateral act has been made, and the actual content of the act itself. It is in this context only that the form of the unilateral act may be of relevance.

Italy

[Original: French]
[16 May 2000]

As to the form that unilateral acts may take, this also depends on the type of act. For [unilateral acts referring to the possibility of invoking a legal situation and unilateral acts that create legal obligations] (see reply under question 4), the choice of form is limited, as it is mostly legislative acts that are involved. For [unilateral acts required for the exercise of a sovereign right] (see reply under question 4), however, the requisite form depends on the nature of the act.

Netherlands

[Original: English]
[24 March 2000]

(a) Written statements

(b) Oral statements

Both written and oral statements must be unambiguous. As the ICJ remarked in the *Nuclear Tests* case, the question of form is not the decisive factor. In some cases one might envisage a formal notification procedure being required, as in the statements accepting the ICJ's jurisdiction on the basis of the optional clause. According to the Special Rapporteur's criteria and those of the ILC Working Group, however, these statements must be assumed to lie outside the purview of the concept of a unilateral act.

(c) Context in which acts may be issued

In the *Nuclear Tests* case, the Court held that, to be binding, an undertaking must be given publicly and with an intent to be bound. However, that case concerned an undertaking that was made not only vis-à-vis the plaintiffs, New Zealand and Australia, but an undertaking *erga omnes*. An example of a protest that, while intended primarily for the addressee State, was also considered relevant for the international community at large, was when United States warships sailed through the Gulf of Sidra, openly demonstrating that the Libyan claim that the Gulf belonged totally to the Libyan Arab Jamahiriya's — historical — inland waterways was unacceptable to the United States. In other situations, however, it is entirely conceivable that an undertaking or protest may be confidential in nature and intended solely for another State (e.g., a confidential undertaking by an ambassador to the ambassador of another State).

The public nature of a unilateral statement is therefore not decisive as to its binding nature. Where a public unilateral act does appear to be necessary, the publicity requirement (as stipulated by the International Court in the *Nuclear Tests* case) is also intended to provide for external scrutiny of its lawfulness. The desirability of a public statement may also be based on other public interest considerations, and is not solely for the purposes of determining its lawfulness.

The authenticity of a unilateral act must obviously be indisputable. It is worth adding this caveat given the current state of information technology; web sites of government bodies abound and the phenomenon of bogus web sites has already made its appearance.

As for the context in which unilateral acts may be issued, the status of statements made by States members of international organizations is worth considering. They can probably be regarded in many cases as statements made by the State itself. But a State may sometimes not be acting exclusively on its own behalf, but at the same time, for instance, on behalf of other States, as in the non-plenary Executive Boards of the International Monetary Fund and the World Bank. The Netherlands is a member of those organs, but also acts as a representative of other member States. A statement made by the Netherlands in those Executive Boards can therefore not be regarded automatically as a unilateral act of the Netherlands.

(d) Individual, joint or concerted acts

The Netherlands considers that the requirements as described above apply regardless of whether individual, joint or concerted acts are involved.

Sweden

[Original: English]
[28 April 2000]

For all unilateral acts, it must be clear who performs the act, on behalf of whom and when. Further, the intended binding legal effect must appear

from the text or otherwise be clearly ascertainable from the circumstances. The act, which may be oral or in written form, shall also be communicated to the relevant addressee, either by notification to those concerned or through a public statement made in an appropriate public form of which the addressees may take part, for instance in the General Assembly of the United Nations. It follows that an undertaking does not necessarily have to be public as long as it is directed to and delivered to those concerned.

Question 4
Types and possible contents of unilateral acts

Argentina

[Original: Spanish]
[18 May 2000]

A clear distinction must be drawn among the four traditional kinds of unilateral act: promise, waiver, recognition and protest. These obviously have elements in common, but the Commission must be aware that each of them may also have its own characteristics which ought to be properly identified and studied in its future work.

With regard to the content of unilateral acts, their aim must be to produce legal effects which will alter the legal situation of the State carrying out the unilateral act and, indirectly, that of the State or States at which the act is directed. Moreover, there are unilateral acts whose content consists in the definition or clarification of legal concepts in the international sphere, as can be seen, for example, in the history and evolution of some law of the sea institutions.

El Salvador

[Original: Spanish]
[13 April 2000]

The unilateral acts of a State on the international plane can be of various kinds, namely:

- *Notification.* The act whereby a State officially informs another State of a fact or situation. As a result of this act, the notified State cannot claim to be unaware of the fact or the situation of which it has been notified;
- *Recognition.* The act or series of acts whereby a State confirms and accepts a fact, a situation, an act or a claim. The recognizing State may not subsequently reject the existence, validity or legitimacy of what it has recognized. The following, among others, may be recognized: States, Governments, a territorial situation, the validity of a treaty or judgement or the nationality of persons;
- *Protest.* The express act whereby a State declares its intention not to accept or recognize as legitimate a given claim or situation. This is the counterbalance to recognition;
- *Waiver.* A statement of intent to relinquish a right, a power, a claim or a demand. Its effect is to extinguish the right or claim in question;
- *Unilateral promise.* A written statement of intent made by a State with the clear intention of binding itself to adopt certain behaviour towards other States;
- *Declaration.* A unilateral statement of intent by a State on a foreign policy matter, which produces legal effects between the party making the declaration, the party harmed by it and the international community in general;
- *Appeal.* An express statement by one State with regard to another that it intends to submit a dispute to an international judicial or diplomatic organ, or any other international body, for consideration with a view to resolving it or bringing the parties closer together;
- *Resolution.* An act of unilateral intent by a State in the application and interpretation of international law.

Georgia

[Original: English]
[3 March 2000]

Declaration, proclamation and notification can be considered as the main types of unilateral acts.

Israel

[Original: English]
[21 June 2000]

In addition to the formal categories of unilateral acts undertaken in the context of treaties (such as ratification, reservation and denunciation) and those which are expressly recognized in international law (such as recognition and protest), there exist a wide variety of possible types and contents of unilateral acts. Thus, for example, a State may undertake a legal commitment to one or more other States, or to the international community as a whole, with respect to the use of its natural resources; to activities on its sovereign territory; to its conduct in international or regional forums; or to its involvement in military operations outside its borders. In general terms, however, it does not seem possible to specify a determinate category of unilateral acts which could produce legal effects.

Italy

[Original: French]
[16 May 2000]

We classified unilateral acts into the following three categories:

(a) **Unilateral acts referring to the possibility of invoking a legal situation.** Recognition, protest and waiver belong to this category. These three types of acts require an explicit expression of consent so as to ensure certainty and security in international relations;

(b) **Unilateral acts that create legal obligations.** This category includes promise, an act by which a State obligates itself to adhere or not adhere to a certain course of conduct. A promise has value only if the State which made it really had the intention of obligating itself by this means. It is difficult, however, to ensure that there is a real willingness to undertake obligations;

(c) **Unilateral acts required for the exercise of a sovereign right.** Such acts are a function of the exercise of powers by States as authorized under international law (delimitation of territorial waters or of an exclusive economic zone, attribution of nationality, registration of a vessel, declaration of war or neutrality).

Netherlands

[Original: English]
[24 March 2000]

The contents of unilateral statements are not restricted to certain categories of subject matter. The Netherlands therefore considers the contents of the statement of secondary importance for the purpose of producing legal effects. Of greater relevance are formal criteria such as the unambiguity of the statement and the objectified intention of producing legal effects, that is to say an intention that can be demonstrated objectively.

Where statements made by representatives of a State during international legal proceedings are concerned, undertakings should be distinguished from statements encapsulating an interpretation of a particular rule of international law. In the latter case, any objection to the statement can in principle only be addressed to the State in whose name it was made, in the context of the legal proceedings concerned. Nonetheless, such a statement could conceivably also be objected to in bilateral negotiations imposed on both parties by an international court or recommended to the State in question (cf. the *Gabcikovo-Nagymaros Project* case).

Unilateral statements concerning the acceptance of the jurisdiction of the Court on the basis of the optional clause are in a category of their own, although, as noted above, these statements would be excluded from the definition of unilateral acts on the basis of the Special Rapporteur's and the ILC Working Group's criteria.

Finally, the Netherlands has the impression that the Special Rapporteur intends to exclude "soft law" (e.g., the Rio Declaration on Environment and Development of 1992 or the Declaration of the North Sea Ministers Conference of 1993) from the scope of the concept. It is not impossible, however, that such declarations would have to be regarded as falling within the scope of joint or concerted statements (see section 2 of Netherlands response under "General comments").

Sweden

[Original: English]
[28 April 2000]

A unilateral act may relate to any subject matter.

Question 5
What legal effects do the acts purport to achieve?

Argentina

[Original: Spanish]
[18 May 2000]

Normally, the effect will be the creation or modification of an obligation or the waiver of a right of the issuing State, effects governed by the international legal system. The effect may also be to enforce or preserve a right, as in the case of protest. The purpose of a unilateral act may also be to define a legal concept or situation, as can be seen in the development of some law of the sea institutions.

El Salvador

[Original: Spanish]
[13 April 2000]

Generally speaking, once they gain legitimacy, unilateral acts as an expression of the sovereign will of a given State have the effect of creating, extinguishing or modifying obligations of that State vis-à-vis the international community, another State or an international body. The effects vary according to the specific nature of each act, which can be determined by reference to question 4 above.

Finland

[Original: English]
[3 March 2000]

A unilateral act is not only binding to the extent that it intends to be so, but also inasmuch as it creates expectations. Thus it may become binding irrespective of the intention of the person making it.

Georgia

[Original: English]
[3 March 2000]

Unilateral acts may:

(a) Create obligations for the author State;

(b) Create rights for other States;

(c) Revoke rights of the author State;

(d) Determine the limits of the rights of the author State within certain constraints (the law of Georgia determining the maritime zone in the Black Sea);

(e) Initiate multilateral action;

(f) Declare on abstaining from participation.

Israel

[Original: English]
[21 June 2000]

A unilateral act with legal effect creates a legal obligation which assumes an objective quality. The State which has engaged in such an act has thus expressed its intention to be regarded as legally bound. The fact that established mechanisms of enforcement may not be available does not alter the status of the unilateral act as a legal obligation, nor does it affect the legal rights of the addressee of the act in the even of breach. In addition, it should also be noted that unilateral acts may contribute to the development of norms of customary law.

Italy

[Original: French]
[16 May 2000]

In answering the questions on the purpose of unilateral acts and the legal effects they purport to achieve, here too it is necessary to make distinctions in accordance with the type of act (see reply under question 4), and therefore it is impossible to provide a general answer. It is obvious that the purpose of the act varies in each case, as do the legal effects deriving therefrom. There are unilateral acts that achieve immediate legal effects and others that create expectations, often irrespective of the real intention of the subject which formulated the act. In any event, the effects of unilateral acts can never be similar to those of treaties, in order to avoid jeopardizing the security of international relations. Of course, the legitimate expectations of the parties should be safeguarded, but not to the point of creating a new category of agreements.

Netherlands

[Original: English]
[24 March 2000]

If the State on whose behalf a unilateral statement is made intends to produce binding legal effects, these effects are limited by the requirement of lawfulness. In other words, a statement cannot set out to produce effects incompatible with general rules of international law, in particular *jus cogens*. A statement does not necessarily have to be made in all cases with the intention of avoiding any conflict with existing obligations under international law. This raises the question of the hierarchy to be observed between treaty obligations and rights or obligations arising from unilateral acts. It might be held (but this would be a policy decision by the international community) that a treaty obligation always takes precedence, or that the presumption is that the legal effects of a unilateral statement are not incompatible with treaty obligations and that the statement will be interpreted in line with this.

Sweden

[Original: English]
[28 April 2000]

The legal effect may be different for different kinds of unilateral acts. The following remarks are fully relevant to promises, whereas the effect of other unilateral acts may be governed by particular regimes.

A unilateral act binds the enacting State, through its expressed intention to become bound. However, owing to the element of good faith, the crucial factor is not the "real" intention itself, but its manifestation and a bona fide interpretation of the act. Even though it is true that the State enacting a unilateral act should be protected from unintended and unforeseen consequences, one must also consider the legitimate interests of other parties. This aspect is relevant also for the interpretation of unilateral acts.

Question 6
What is the importance, usefulness and value States attach to their own unilateral acts on the international plane and to the unilateral acts of other States?

Argentina

[Original: Spanish]
[18 May 2000]

The performance of unilateral acts is an important means of conducting the State's international relations. That is why the Government of Argentina wishes to emphasize the importance of an in-depth analysis of the issue, given the current imprecision of the legal regime governing such acts. The importance of unilateral acts as a means of conducting international relations makes it necessary that the rules governing their requirements, validity and effects, as well as their classification, should be properly formulated. In this connection, systematizing and clarifying this area of law will doubtless introduce greater legal security and confidence into international relations.

Without going into the rather academic issue of whether or not unilateral acts are a source of international law within the meaning of Article 38 of the Statute of the International Court of Justice, it seems to be established that they can give rise to international rights and obligations for States. In any event, the fact cannot be avoided that a considerable part of legal doctrine has opposed the existence of unilateral acts as sources per se of international obligations. In this respect, the Government of Argentina believes that it would be very useful to make a comparison between unilateral acts and other related juridical situations, such as acquiescence and estoppel. A study of such institutions would be very useful for clarifying these issues.

El Salvador

[Original: Spanish]
[13 April 2000]

The Salvadoran State attaches full importance to its own unilateral acts, in the sense of considering itself bound by the terms of any unilateral act emanating from it, this being an authentic source of international law. Of course, from the standpoint of reciprocity, the

Salvadoran State also accords full validity to the unilateral acts of other States, provided that they are performed with due formality and acquire authenticity by being expressed by an authority with full powers.

Georgia

[Original: English]
[3 March 2000]

The importance of a unilateral act is determined from the essence of the notion. When a State is able to make any statement at and feasible to produce international legal effect, the possibility must be underestimated. The unilateral act is a flexible means for a State to express its will in day-to-day diplomacy. A State must respect the unilateral acts of other States, especially of friendly States, at least on the principle of reciprocity.

Israel

[Original: English]
[21 June 2000]

In the view of the Government of Israel, the vast majority of unilateral acts of States are political in nature and do not produce legal effects. Such acts may involve obligations at the moral or political level, but they are not regulated by international law. In State practice, unilateral declarations are generally designed to allow a Government to express its political will, or to achieve certain political objectives, without involving legal obligations. Their importance and usefulness lie primarily on the political plane, in the realm of inter-State relations.

As a matter of course, unilateral declarations are not subjected to a preliminary legal examination by the State in order to determine whether a legal obligation has been undertaken since it is generally assumed that the declaration is a political rather than a legal act. States will as a rule be reluctant to undertake legal obligations or restrictions on a unilateral basis. Only when there exists a clear and unequivocal intention to that effect will the Government of Israel attribute legal significance to its own unilateral acts or to those of other States.

Italy

[Original: French]
[16 May 2000]

The answer to the question concerning the importance, usefulness and value attached to unilateral acts is similar to the preceding one: it depends on the type of act under consideration (see reply under question 4). In any event, with regard to unilateral acts of other countries or its own acts, Italy does not attach the same binding value to them as to treaties, for what is involved after all are internal acts, even if they are addressed to other States, and they cannot achieve the same effects as treaties, taking into account the need for security and [word(s) missing] in international relations to which we have referred.

Netherlands

[Original: English]
[24 March 2000]

The Netherlands acknowledges the importance of unilateral acts at the international level, while at the same time noting that in view of the large variety of types of unilateral acts it is difficult to identify common legal effects and provide specific answers to questions posed.

Sweden

[Original: English]
[3 March 2000]

The unilateral act may be convenient in situations where a treaty would be too cumbersome or in situations where it might be politically difficult for parties to negotiate directly with one another.

Question 7
Which rules of interpretation apply to unilateral acts?

Argentina

[Original: Spanish]
[18 May 2000]

One area where a distinction must be made between the rules of the law of treaties and those applicable to unilateral acts is that of the interpretation of unilateral acts. As stated by the International Court

of Justice in the *Nuclear Tests* cases, when a State makes a declaration limiting its future freedom of action, a restrictive interpretation must be made. This is simply a corollary of the famous dictum of the Permanent Court of International Justice in the *Lotus* case, to the effect that restrictions on the sovereignty of States cannot be presumed. As in any unilateral juridical act, the intention of the author of the act (in this case, the State or, more precisely, the organ of the State) plays a fundamental role. For this, one crucial element must be borne in mind, namely, the circumstances surrounding the act; in other words, the context in which the act takes place may determine its interpretation. Another rule stipulated by the Court, in the *Anglo-Iranian Oil* case, is that the act must be interpreted in such a way that it produces effects which are in conformity with, and not contrary to, existing law.

Austria

[Original: English]
[2 March 2000]

In the 1998 *Fisheries Jurisdiction Case (Spain v. Canada)*, the ICJ considered the regime relating to the interpretation of unilateral declarations made under Article 36 of the Statute of the ICJ not to be identical with that established for the interpretation of treaties by the Vienna Convention on the Law of Treaties. The Court observed that the provisions of that Convention may only apply analogously to the extent compatible with the sui generis character of the unilateral acceptance of the Court's jurisdiction. The Court explained further that it would interpret the relevant words of such a declaration including a reservation contained therein in a natural and reasonable way, having due regard for the *intention* of the State concerned at the time when it accepted the compulsory jurisdiction of the Court. Moreover, the intention of the State concerned could be deduced not only from the text of the relevant clause, but also from the context in which the clause is to be read, and an examination of evidence regarding the circumstances of its preparation and the purposes intended to be served. With respect to the interpretation of these unilateral acts, therefore, it appears that the Court attaches much higher interpretative significance to the subjective element than would be permissible under the rules of "objective" treaty interpretation pursuant to articles 31 and 32 of the Vienna Convention on the Law of Treaties. How far this subjective element can be taken and whether or to what extent the same reasoning is applicable to other categories of unilateral acts remain unclear.

El Salvador

[Original: Spanish]
[13 April 2000]

Unilateral acts must be interpreted in good faith in accordance with the ordinary meaning to be given to their terms in the light of their object and purpose. A special meaning can be given to a term only if it is established that the State performing the unilateral act so intended.

Finland

See reply to question 1.

Georgia

[Original: English]
[3 March 2000]

Treaty bodies of intergovernmental organizations with appropriate competence, such as the International Court of Justice, may consider the will and validity of unilateral acts.

Israel

[Original: English]
[21 June 2000]

As stated above (question 3), the process of defining a unilateral act as one which produces legal effects is essentially an exercise in interpreting the intention of the State which engages in the unilateral act. It is because of the difficulty associated with ascertaining the true intention of the State that strict rules of interpretation should be applied in order to determine whether a unilateral act produces legal effects. In this regard, the need to subject the unilateral act to a good faith interpretation in accordance with its ordinary meaning, along the lines of article 31 of the Vienna Convention on the Law of Treaties, is an important, though insufficient, part of the interpretation process. In addition, and as indicated in draft article 2 of the second report on unilateral acts of States, the unilateral legal act must be an unequivocal and autonomous expression of will, formulated publicly

and directed in explicit terms to the addressee of the act.

In this context, it should be emphasized that the failure to adopt rigid standards of interpretation would, in our view, not only undermine the effectiveness of the legal regime regulating unilateral acts, but would also place States in an impossible position by threatening to attribute legal consequences to unilateral acts which were not intended to have such an effect. This is especially so in the light of the fact that unilateral acts of a strictly political nature are a matter of course in contemporary inter-State practice and are prevalent, *inter alia*, in declarations made in international forums, in the course of informal consultations, and in the context of negotiations between States.

Italy

[Original: French]
[16 May 2000]

With regard to the question concerning the rules of interpretation applying to unilateral acts, there is a tendency to apply to them the principles of interpretation referred to in articles 31 to 33 of the Vienna Convention on the Law of Treaties. On the other hand, the other provisions of that Convention do not apply, in view of the nature of unilateral acts, which is inherently different from that of treaties.

Netherlands

[Original: English]
[24 March 2000]

The obvious solution would be to apply by analogy the rules of interpretation enshrined in the Vienna Convention on the Law of Treaties.

Sweden

[Original: English]
[28 April 2000]

While the provisions of articles 31 and 32 of the Vienna Convention on the Law of Treaties are relevant for the interpretation of unilateral acts, the special character of the unilateral act has to be taken into account (see the response to question 5).

Question 8
Duration of unilateral acts

El Salvador

[Original: Spanish]
[13 April 2000]

The duration of unilateral acts depends solely on the time which the State performing the act considers necessary for its validity, since it is an act of full sovereignty. As a result, the State could very well revoke the act itself if it sees fit.

Georgia

[Original: English]
[3 March 2000]

- If the author State considers the effects of the act to be no longer expedient, it may revoke it.
- The act may be terminated after a fundamental change of circumstances has occurred.

Israel

[Original: English]
[21 June 2000]

It is doubtful whether one can establish a uniform rule regarding the duration of unilateral acts. In principle, the duration of a unilateral undertaking will be determined by the nature of the obligation, the specific content of the unilateral act and the circumstances in a given case. In addition, it is reasonable to assume that, in certain cases, the legal effects of a unilateral undertaking would come to an end as a result of extraneous events. This could be the case, for example, in the event of a supervening impossibility of performance or owing to a fundamental change of circumstances.

Italy

[Original: French]
[16 May 2000]

The answer to the question concerning the duration of unilateral acts depends on the context in which the act is implemented and on its purpose. In general, it is not possible to specify the duration of unilateral acts. Indeed, it is difficult, if not impossible, to envisage an unlimited duration for such acts, which

are by their nature informal, for otherwise the result would be the creation of a new category of agreements.

Netherlands

[Original: English]
[24 March 2000]

In this respect also, the relevant provisions of the Vienna Convention on the Law of Treaties apply by analogy. In principle, there are no limits to the duration of the validity of unilateral acts. They nonetheless cease to apply as a result of desuetude or if set aside by bilateral treaties. A change of government does not affect the validity of acts, unless they are expressly revoked. Finally, the duration of the validity of a unilateral statement may be restricted because it contains a time limit or an explicit condition that ceases to apply at a particular time.

Sweden

[Original: English]
[28 April 2000]

It is probably not possible to make a general distinction between unilateral acts and treaties in this respect, but it seems likely that the special character of different types of unilateral acts must be taken into account.

Question 9
Possible revocability of a unilateral act

Argentina

[Original: Spanish]
[18 May 2000]

With regard to the possible revocability of unilateral acts, the Government of Argentina believes that the author of a unilateral act, once its intent has been externalized, does not have an arbitrary power to review the act and thus cannot revoke *ad libitum* the promise, waiver or other act concerned. Of course, the author may make the act subject to a time limit or to a resolution, or make express provision for the possibility of revoking it. It should be mentioned that a part of legal doctrine maintains that if the possibility of revocation does not arise from the context or the nature of the unilateral act, promises or waivers are, in theory, irrevocable. Another part, however, maintains that they can, in theory, be revoked, but not arbitrarily or contrary to good faith. In any event, it is clear that the resulting legal situation cannot be immutable. General rules, such as *force majeure*, chance and, especially, *rebus sic stantibus*, apply here. Moreover, some unilateral acts, such as protest, are generally revocable.

El Salvador

[Original: Spanish]
[13 April 2000]

If one applies the Vienna Convention, a unilateral act may be modified or revoked because it is an expression of the sovereign will of a State, but notice of such modification or revocation must, without question, be given through the same channels as the State used originally for the act.

Finland

[Original: English]
[3 March 2000]

A unilateral act can be revoked under the formula elaborated by the International Court of Justice in the *Nuclear Tests* case.

Georgia

[Original: English]
[3 March 2000]

Reasons for the revocation can be:

- An error in act;
- The fraudulent conduct of another State;
- Bribery of the official making the declaration;
- Contradiction with a general rule of international law;
- Contradiction with the commitment of a State under international treaties.

Israel

[Original: English]
[21 June 2000]

In general terms, it does not seem logical to enable a State to produce legal effects through a unilateral act but not to recognize its capacity to revoke that act on a unilateral basis, in certain circumstances. Naturally, a State may undertake an obligation which would limit its right of revocation. However, in the

absence of such an undertaking the possibility of revocation, subject to certain conditions, should be accepted.

Clearly, the specific character and content of the unilateral act may indicate the circumstances under which revocation is possible. However, several other factors should be considered. In this regard it is worth examining whether the principle of good faith, for example, should require that reasonable notice be given prior to revocation, though such a condition may not be practical in every instance.

Italy

[Original: French]
[16 May 2000]

As to the possibility of revoking a unilateral act, a unilateral act may be revoked in accordance with the formula arrived at by the International Court of Justice in the *Nuclear Tests* case (Judgment of 20 December 1974).

Netherlands

[Original: English]
[24 March 2000]

The revocation of a unilateral act is also, in the view of the Netherlands, subject to the analogous application of the relevant provisions on the termination of treaties, as set down in the Vienna Convention on the Law of Treaties. The Netherlands would suggest that the International Law Commission consider the question of the application and invocation of the *rebus sic stantibus* proviso with regard to unilateral acts.

Sweden

[Original: English]
[28 April 2000]

While treaty regimes usually contain provisions on issues like termination, suspension and withdrawal, it is in the nature of unilateral acts that they do not regulate the corresponding issues. For this reason, there is a need for general rules on the subject. On the other hand, it is necessary to take into account the fact that these issues have to be treated differently for different forms of unilateral acts. The question whether a unilateral act can be revoked, and under what conditions, is difficult and can be answered only taking into account the circumstances of each particular case. For example, it does not seem possible to revoke a recognition, unless there is ground to revoke it (for example, that a State no longer exists).

However, a few observations can be offered. Obligations arising out of unilateral acts are affected by later treaties in analogy with article 58 and 59 of the Vienna Convention on the Law of Treaties, just as supervening impossibility of performance or fundamental change of circumstances affect such obligations. Even if there is no element of quid pro quo in the origin of a unilateral act there is often an element of reciprocity in the legal relationship arising out of these acts. It would not seem unreasonable if a State were able to withdraw a promise if another subject takes advantage of this promise in bad faith. Similar considerations apply to modifications.

Lastly, it seems logical to hold that unilateral acts can be invalidated in cases of error, fraud, corruption, coercion, use of force or *jus cogens*. In this context, it should be noted that the Vienna Convention on the Law of Treaties makes a certain distinction between voidable and void treaties, whereas draft article 7 does not make such a distinction with regard to unilateral acts.